



DECLINING OPPORTUNITIES IN MATTERS OF PUBLIC EMPLOYMENT AND THE FUTURE CHALLENGES

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ABSTRACT

In the global stature India has attained a classification as a developing country and even this view also at times was subject to review towards upwards, in view of the fact that the credibility of the country apparently on a high note at par with the other developed countries. This being so there is a need for the State to concentrate on issue of employment generation with protective conditions of service in both State as well as in private services, in contrast to exploitative conditions. In the long run this would ultimately have an impact on the economy of the country. This must be viewed as a priority before the nation. The present Article attempts to study the net outcome of such policy measures on a country like India.

KEYWORDS: Constitution of India, employment, public employment, employment opportunities, public services, State services.

In India the employment opportunities in Government Services either central or public services is viewed as matters relating to employment opportunities in State Services or employment opportunities in public employment. Interestingly, the Constitution of India uses these two terms namely, opportunities in public employment or opportunities in public services, the words opportunities in public employment are emphatically used in the scheme of Article 16.¹ The words persons appointed in public services and posts in connection with the affairs of the Union or State have been emphatically used in the scheme of Articles 309, 310 and 311 of the Constitution, respectively. Thus, in India the matter of State Services has been accorded a constitutional stature in matters relating to appointment as well as in matters relating to tenure and protection of other service conditions.²

Immediately after the commencement of the Constitution, employment opportunities in State Services have gained much prominence in view of the safeguards accorded in the Constitution in matters relating to recruitment, tenure and other conditions of service. In this context, the relevant provisions in the Constitution have ensured the aspect of protection of 'regulation of employment' in State Services. The State, subject to the constitutional limitations and by virtue of Article 309 has the power to frame rules and the mode of vacancies to be filled up.³ The words 'regulation of employment' signifies 'security of tenure' or 'continuity' of employment. Certainly, this privilege is in contrast to the situation in non-state employment opportunities namely, the private employer or private organisations or establishments save in certain situations. This does not imply that in India the private sector is totally alien in providing employment opportunities to citizens of India from the time when we have adopted the Constitution. By virtue of this scheme as envisaged by Article 309, the role of Public Service Commission has been identified parallelly with the enactment of appropriate legislations or regulations in matters relating to recruitment, tenure and other conditions of service in State Services. Also, well defined pay structure subject to the periodical revision on the basis of recommendations of the high-power Commissions for the persons employed in State Services. In view of this privileges, the matter of employment opportunities in public services or State Services has assumed a greater importance in India over the years. Parallelly, Article 16(4) of the Constitution enabled the State to make provisions for reservations of appointment or posts in State Services in favour of any backward classes of citizens with a view to ensure their representation adequately in the services of the State. This was further strengthened by subsequent amendments with the insertion of Article 16(4)(A)⁴ and 16(4)(B)⁵, respectively. And also, the recent initiations made by present Central Government in providing a 10% of employment opportunities to Economically weaker Sections.⁶

With the initiation of liberalisation process which has commenced from early 1990s and ultimately picked up its momentum from the beginning decade of the 21st century, the nation saw a transformation of process in matters relating to public employment or employment in State Services. Over the years, the State Governments have adopted the policy of 'austerity measures' by issuing appropriate Government Orders imposing ban on recruitments in State Services except under the guise of filling up of backlog vacancies, under the relevant Articles of the Constitution.⁷ So within a span of two and a half decades, the scenario was clear that the opportunities in public employment have considerably reduced. However, the fact is clear that there is a significant expansion of State role in matters relating to various fields in its governance, the country witnessed the creation of new ministries at the Union as well as at the State level bringing within its domain various new office organisations. Normally, this environment must lead to the

increasing opportunities of employment in State Services but the reality speaks altogether a different theory, the active phase of globalisation process in the country saw the culture of disinvestment process, merger aspects, closing down of non-performing entities and the creep process of outsourcing of various supportive services in the state departments or services.

The culture of outsourcing over the years have grown to greater horizons in State Services and perhaps the railways, and other public transport services are classic examples in India. The net resulting process of this economic transformation in the domain of State Services is mitigation of employment opportunities in State Services in the country. The growing reality is very clear that within the domain of a department or organisation owned by the State, there exists two employers namely, the State and the private entrepreneur namely, the middle man or a contractor or a contract firm. This type of situation is rampant in non-sovereign activities of the State and more evidently in respect of the instrumentalities of the State. In Karnataka Power Transmission Corporation Ltd except the higher rung positions for the cadre of Junior Engineer, in the lower rung on the technical side there is a complete scenario of outsourcing apart from various ministerial and other support services. Even in matters relating to sovereign functions of the State supportive ministerial services such as a stenographer, a typist, a computer operator etc are from the domain of 'outsourcing'.

In many States, in the State-run Universities there is a declination of regular recruitment process in both cases of teaching and non-teaching positions. The situation is more concerning in degree colleges (First Grade) and Pre-University Colleges run exclusively by the State and they are known as Government Degree Colleges and Government Pre-University Colleges. Since many years these colleges are known for employment of the persons to the teaching services in the guise of guest lectures. The situation has become more complicated with the intervention University Grants Commission (UGC) by creating a special post namely 'teaching assistants' (nomenclature) whose services are taken as full-time temporary services assigning substantial amount of work load for comparatively low remuneration. The net result in the process is this type of arrangement would certainly put a temporary grinding halt on the process of regular recruitment in State Services.

Education is the vast field which even today owned are run by State. However, the available employment opportunities are far from deserving level of competition. The scenario on non-teaching employment situation in these institutions is equally deplorable due to the reason that substantial amount of the services under this head are outsourced. The activities of cleaning, sweeping, watching and other supportive services such as driver etc are totally outsourced since long. The net result of these changing perceptions of opportunities in matters relating to employment in State Services is denial of security of tenure, salary and other service conditions. The issue of salary projects a wide disparity between the persons in regular services in the State and the persons drawn from the outsource concerns. Certainly, this leads to abrogation of equality clause as enshrined in Article 14 of the Constitution as well as Article 21 of the Constitution.⁸

One can imagine the adverse pressure on the growing population especially unemployed youth in the country. The projections made by national institutions namely, National Statistical Survey in this regard proves a plenty of tale of facts which in fact were denied by the Prime Minister's Office (PMO).⁹ Parallelly this transformation resulted in the tremendous growth of private sector in India, more

emphatically the IT sector. Though the private sector more emphatically the IT sector proved to be an employment opportunities provider in the country, the same is limited to certain technical or specialised qualifications. In the process the youth who are graduated from this conventional educational institution such as Universities, have remained jobless in the country. Thus, compelling them to accept any job under a private employer under the exploitative conditions, where in no security of tenure and other service conditions. On the other side, owing to the fact of adopting of outsourcing policy in various State departments, the rung of private sector has further widened with a specific feature of contractualisation.

The growth of contract firms in various fields have tremendously increased over the years in the country. Thus, putting an end to a formal contractual relationship of employer and employee which has been transformed into three party relations namely, principal employer, the labour contractor and the contract service persons. The resulting factor of this incidents was the role of the State as an employer remained as smokescreen, denying the direct relationship of master and servant between the State (principal employer) and the contract service persons. Apart from this the process of irregular employment in State Services gained momentum with the incidence of daily wage rate employees, ad-hoc employees, casual employees etc. Such employees come under the purview of back-door entry and the said employees have no claim to regularise their employment.¹⁰ The Supreme Court held that the regularisation of the ad hoc employees is legitimate only when there are sanctioned vacancies with regard to the posts concerned.¹¹ Further, the Supreme Court also held that such employees need to possess the requisite qualifications and such candidates should possess the requisite criteria of eligibility, only then the employees will be eligible for the consideration for the permanent posts.¹² The net process of all this transformation is denial of security of tenure and exploitative conditions of service for the persons who are employed under these incidences apparently in State Services. The persons who are employed under this culture of employment in State Services are undoubtedly exploited with poor wages and other service benefits.

Equally the disturbing factor is that increase in growth of private sector in matters relating to education in a span of two decades in the country, the private sector has assumed a greater role in education sector right from nursery education to higher education impressively in matters relating to professional education such as medicine, engineering, law etc. This trend has increasingly spread over the years in the areas of school, pre-university and college education. Again, the resulting factor of this trend is obviously the quality education is made open only to well affordable sections in the society and living many sections in the society as helpless. This situation is viewed as double-edged sword namely, exploitation in providing quality education as well as exploitation in matters relating to employment opportunities in these institutions.

The initiation made by the State in making the right to education as fundamental right for the children from the age of 6 years to 14 years has remained only as a dream to be achieved.¹³ The situation has become more challenging in view of growing trend of private educational intuition in school education. The role of the Committees¹⁴ set up in this endeavour proved to be unimpressive in the context. The net resulting process of all these developments which apparently uncalculated through the process of the phase of post reforms in our country is proving to be a negative watershed for the promotion of the concepts of social welfare and social justice which was the dream of the founding fathers of the Constitution in a country which even today witness societal inequalities between the rich and the poor. Thus, making in the process the challenge before the State is tough under the prevailing political economy as perceived by the State. The challenge is that how to ensure socio-economic protection to the poor and needy population in the country. The concept of State Service is sacred in India an account of the fact that the same ensures a protection of tenured employment with well-defined service conditions including the salary package. The service conditions in State Services are highly secured for many reasons which include the protection of social security measures consisting fringe benefits such as service benefits and gratuity, old age security, security in the event of any misfortune which includes a measure of compassionate appointment to the dependant, in the event of the demise of the bread winner in the family while in service. The old age protection includes a measure of well-defined contributory pension scheme. The purpose would lose its essence if the State continuous the prevailing trend of employment opportunities under it to the citizens of India. In the process the vision under the Constitution of India would remain as mere theoretical postulation in contrast to a reality.

CONCLUSION:

Off late, India has gained a considerable momentum in terms of economic prosperity of the country amid controversial claims and counter claims. Whatever may be the fact the priority must be the goals enshrined in the Constitution which ultimately implies that the State owes a bounded duty to provide meaningful employment opportunities both in State and private enterprises with certain protective service conditions in contrast to sheer exploitation as prevailing now under present circumstances.

REFERENCES:

Notes:

- I. Article 16 of the Constitution of India provides for Equality of opportunity in matters of public employment-

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

- II. M.M Dolichan v. State of Kerala, AIR 2001 SC 216
- III. Andhra Pradesh Public Service Commission v. Balaji Badhavath, AIR 2009 5 SCC
- IV. This Article was inserted by the Constitution (Seventy-seventh Amendment) Act, 1995
- V. This Article was inserted by the Constitution (Eight-fifth Amendment) Act, 2000
- VI. This Article was inserted by the Constitution (One Hundred and Third Amendment) Act, 2019
- VII. Article 16(4)(A) of the Constitution of India provides; Nothing in this article shall prevent the State from making provision for reservation in matters of promotion, with consequential seniority to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State are not adequately represented in the services under the State. Article 16(4)(B) of the Constitution of India provides; Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty percent reservation on total number of vacancies of that year.
- IX. See Article 14 and 21, Part III of the Constitution of India
- X. <https://economictimes.indiatimes.com/jobs/indias-unemployment-rate-hit-6-1-in-2017-18/articleshow/69598640.cms?from=mdr>, last visited on 02-03-2021 at 3.30 P.M.
- XI. Secretary, State of Karnataka v. Uma Devi, AIR 2006 SCC 4
- XII. Ashwini Kumar v. State of Bihar, AIR 1997 2 SCC
- XIII. Dr. Chanchal Goyal v. State of Rajasthan, AIR 2003 3 SCC 485
- XIV. This Article was inserted by the Constitution (Eighty-sixth Amendment) Act, 2002
- XV. Section 21 of the Right to education Act, 2009 which provides for constituting a School Management Committee